



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/161832

PRELIMINARY RECITALS

Pursuant to a petition filed November 10, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on December 02, 2014, at Milwaukee, Wisconsin.

The issues for determination are:

1. Whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$988.35 for the period of March 23, 2014 – April 30, 2014 due to an agency error; and
2. Whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,680.40 for the period of May 4, 2014 – June 10, 2014 and June 25 – 30, 2014 due to a client error of Petitioner and her children's father not being in approved activities.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Glenetta Rucker

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner and DL have three children together. Prior to March 18, 2014, DL was not in the Petitioner's household.
3. Petitioner works 40 hours/week, Monday through Friday, with hours that vary between 7:00 a.m. – 10:30 p.m.
4. On January 14, 2014, the agency issued a notice regarding the Petitioner's child care authorizations informing her that two of her children were authorized for 45 hours/week of child care for the period of January 5, 2014 – June 28, 2014.
5. On March 18, 2014, DL was added to the Petitioner's case after her report to the agency that he was living in her household. Petitioner reported that DL worked 1 a.m. – 10 a.m.
6. The Petitioner's provider opened at 6:00 a.m. At the time that DL was added to the Petitioner's case, the agency did not adjust the Petitioner's child care hours at that time to account for the hours that DL was not working and was able to provide child care.
7. On May 2, 2014, DL's employment ended. The Petitioner did not report the loss of employment to the agency.
8. On May 12, 2014, Petitioner contacted the agency to report that DL was no longer working. The case was pended for verification. On May 14, 2014, the Petitioner completed a renewal. She reported DL was in the home and working 20 hours/week. In response to the question "Loss of Employment?" for DL, she responded "no." On May 15, 2014, the Petitioner contacted the agency and reported that DL was working. The agency unpended the case to show DL was working.
9. On May 19, 2014, the agency discovered the error in not re-calculating the authorized hours for child care due to DL being in the household and available to provide child care.
10. On May 27, 2014, the agency issued a notice informing the Petitioner that child care authorizations would be ending on May 24, 2014.
11. On June 10, 2014, the Petitioner contacted the agency and reported that DL is no longer in her household.
12. On June 25, 2014, the Petitioner gave birth and commenced a maternity leave from work.
13. On June 30, 2014, the Petitioner contacted the agency to report the birth of her baby. The case was pended for verification of Petitioner's maternity leave. On July 18, 2014, the agency received verification from Petitioner's employer that she was on maternity leave from June 25, 2014 – August 25, 2014.
14. On August 8, 2014, the agency received verification that DL had not been employed since May 2, 2014.
15. On November 6 and 7, 2014, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner and DL informing them that the agency intends to recover an overissuance of child care benefits in the amount of \$988.35 for the period of March 23, 2014 – April 30, 2014 due to an agency error in not re-calculating Petitioner's authorized child care hours after DL was reported in the home and an overissuance of child care benefits in the amount of \$2,680.40 for the period of May 4, 2014 – June 10, 2014 and June 25, 2014 – June 30, 2014 due to client error in not reporting that Petitioner and DL were not in approved activities.
16. On November 10, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

Overissuance of \$988.35 Based on Agency Error – Claim # [REDACTED]

In this case, the agency presented evidence that DL worked Monday – Friday until 10:00 a.m. and Petitioner started work at approximately 7:00 a.m. Monday – Friday. When DL was not in the home, Petitioner was authorized for 45 hours of child care/week (40 hours work plus travel time). When DL became part of the Petitioner's household in March, he became available to provide child care when not working. The agency should have reviewed and re-calculated child care hours at that time. The agency concedes that it erred in not re-calculating child care hours needed.

The agency calculated an overpayment of \$988.35 based on the difference between the hours authorized 45 hours/week and the 20 hours/week that should have been authorized once DL was in the household (4 hours/day from 6:00 a.m. – 10:00 a.m., 5 days/week).

The Petitioner did not dispute the work hours for herself and DL. Rather, she disputed her liability for repaying the overpayment when it was the result of an agency error. The regulations cited above require the agency to collect any overissuance of benefits regardless of whether it was agency or client error.

I conclude the agency presented sufficient evidence to demonstrate that there was an overissuance of child care benefits from March 23, 2014 – April 30, 2014 based on the agency's error in not re-calculating the child care hours for which the Petitioner was eligible once DL moved into the household. I reviewed the worksheets and find the calculation of the overissuance is accurate.

Overissuance of \$2,480.34 based on Client Error – Claim # [REDACTED]

The agency contends that the Petitioner failed to report when DL lost his employment on May 2, 2014 resulting in the household receiving child care benefits that it was not entitled to receive. Specifically, as noted above, both parents must be in an approved activity in order to be eligible for child care. DL was

no longer employed nor in an approved activity. He was available to provide child care. Therefore, the household was no longer eligible for child care benefits. DL remained in the household until June 10, 2014. Therefore, the household was not eligible for child care benefits for the period of May 2, 2014 – June 10, 2014. The only dispute from the Petitioner was the date that DL was removed from her case. The Petitioner argued that he reported he should be taken off her case in late April or early May. The agency's evidence demonstrates that she asked to have him removed from her case on June 10, 2014. The Petitioner presented no evidence to rebut the agency. Based on the evidence, I conclude the agency properly removed DL from the household on June 10, 2014 and properly established an overpayment for the period of May 2, 2014 – June 10, 2014.

In addition, the Petitioner went on maternity leave beginning June 25, 2014. The agency's evidence demonstrates that the Petitioner continued to send her two children to day care from June 25 – 30, 2014 even though she was not engaged in work or other approved activity during that time. The Petitioner disputed sending her children to day care during that period. The agency produced evidence from the provider indicating that the children did attend day care from June 25 – 30, 2014. Based on the evidence, I conclude the agency properly established an overpayment for the period of June 25 – 30, 2014 because the Petitioner was not engaged in an approved activity during that time.

CONCLUSIONS OF LAW

1. The agency properly seeks to recover an overissuance of child care benefits in the amount of \$988.35 for the period of March 23, 2014 – April 30, 2014 due to agency error in not re-calculating the authorized hours the Petitioner's household was eligible for when DL became a household member.
2. The agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,680.34 for the periods of May 2, 2014 – June 10, 2014 and June 25 – 30, 2014 due to client error in not reporting that she and DL were not engaged in approved activities during those periods.

THEREFORE, it is

ORDERED

The Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those

identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of February, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 24, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud